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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/590,645	08/25/2006	Yvonne Susanna Veldhuizen	F776-4(V)	1494
201 7590 09/27/2011 UNILEVER PATENT GROUP 800 SYLVAN AVENUE AG West S. Wing ENGLEWOOD CLIFFS, NJ 07632-3100				
EXAMINER				
TRAN LIEN, THUY				
ART UNIT		PAPER NUMBER		
1789				
NOTIFICATION DATE		DELIVERY MODE		
09/27/2011		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentgroupus@unilever.com

**Office Action Summary****Application No.**

10/590,645

**Applicant(s)**

VELDHUIZEN ET AL.

**Examiner**

LIEN T. TRAN

**Art Unit**

1789

**Period for Reply** -- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address --*

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 June 2011.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on \_\_\_\_; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 5) ☒ Claim(s) 2-7 and 10-14 is/are pending in the application.
- 5a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 6) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 7) ☒ Claim(s) 2-7 and 10-14 is/are rejected.
- 8) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 9) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 10) ☐ The specification is objected to by the Examiner.
- 11) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-853)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_

The 112 second paragraph rejection is hereby withdrawn.

Claims 2-7, 10-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuan et al as evidence by Karpanen et al ( EPO948265B1) submitted by applicant.

Yuan et al disclose a composition comprising sterol or stanol esterified with fatty acids and emulsifiers. The sterol or stanol derivatives can be esters of sunflower oil, cotton seed oil, palm oil etc... The emulsifier can be one emulsifier or mixture of emulsifiers selected from the group of lecithin, monoglyceride, polysorbate, sodium or calcium stearoyl lactylate, DATEM, glyceryl monostearate. The amount of emulsifier is present in the composition in amount of about 1% to about 5%. The amount of sterol or stanol ester is from about 30-90%. The amount of the composition in food product will depend upon the formulation; a typical range is from about 5-20%. The foods include baked products such as bread, cakes, brownies etc... ( see col. 1 line 63 through col. 2 line 25, col. 3 lines 43-62, col. 4, col. 6 lines 22-42)

The new claims do not define over Yuan et al. The anti-staling composition claimed is the same as the food ingredient disclosed in Yuan et al. The amount of sterol or stanol ester is about 30-90% and the emulsifier is from about 1-5%; thus, the combined amount falls within the claimed range. Since Yuan et al disclose the same composition and the composition is added to baked products; it is obvious the baked product has the properties claimed in absence of evidence showing otherwise. The emulsifier can be calcium stearoyl lactylate. The amount of emulsifier can be about 1% and the amount of sterol ester can be up to about 90%; thus the ratio of emulsifier to

sterol can be from 1:30 to 1:90 when 1% emulsifier is used. The ratio can range from 1:6 to 1:18 when the upper range of emulsifier is used. Both of these ranges include ratios falling with the claimed range. Yuan et al do not disclose the amount of the food ingredient containing the sterol or stanol ester and emulsifiers based on the weight of the flour. However, they do teach the amount of composition can vary depending on the food formulation. The amount of flour can vary depending on the type of baked product. For example, a known bread formulation disclosed in Karppanen et al contains 30kg flour. If 20% of the food ingredient is used in a bread formulation containing 30 kg of flour, then the amount of the food ingredient is 6kg. Out of which 90% or less can be the sterol ester. If 90% of sterol ester is used, then the % of sterol ester is 18%, but if 70% sterol ester is used, then the % of sterol ester is 14%. If 5% emulsifier is used, then the % of emulsifier is 1%. Thus, the calculation based on flour or total percentage is readily apparent to one skilled in the art and can be readily determined without undue experimentation. The calculation based on flour or total percentage does not lead to a different product.

In the response filed 6/29/11, applicant argues that the calculation is confusing since there is no indication in Yuan et al that the amount of food ingredient is based on flour. This argument is not persuasive. Yuan et al disclose the amount of food ingredient used ranges from about 5-20% by weight. One skilled in the art readily recognizes that the amount of ingredient can be calculated using baker percentage which is based on the amount of flour or regular percentage based on the overall composition. The difference is only in the overall method of calculation and does not

lead to substantially difference in the amount. For example, using a typical formulation for bread disclosed in Karppanen et al, the amount of the food ingredient used can be calculated using the overall composition as well as the amount of flour. The formulation disclosed in Karppanen et al comprises a total of 58.04 kg of ingredients. If 20% of the food ingredient disclosed in Yuan et al is used, then the amount of food ingredient is  $.20(58.02)=11.608$  kg of food ingredient. If the food ingredient is made up of 90% sterol ester, then the amount of ester is  $.90(11.608)= 10.44$  kg which is 18% out of the total composition  $10.44/58.02 \times 100= 18\%$ .. If 70% sterol ester is used for the food ingredient, then the % of sterol is  $.70(11.608)= 8.12$ kg which is about 14% out of the total composition  $8.12/58.04 \times 100= 14\%$ .. Thus, the calculation based on the overall composition or the flour give the same percent.

Applicant states Karppanen et al do not disclose the limitations in the new claims. The Karppanen et al reference is only relied upon to show a known formulation of bread and how the food ingredient disclosed in Yuan et al can be calculated using known formulation. Yuan et al teach the food ingredient can be used in various known food products including bread. The new claims do not define over Yuan et al as set forth in the rejection above. Applicant points to the unexpected result disclosed in the specification, Yuan et al disclose the same food ingredient which can be used in the same type of product. Thus, it is expect the product inherently possess the same unexpected properties.

Applicant's arguments filed 6/29/11 have been fully considered but they are not persuasive.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LIEN T. TRAN whose telephone number is (571)272-1408. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Humera Sheikh can be reached on 571-272-0604. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

September 21, 2011

/LIEN T. TRAN /

Primary Examiner, Art Unit 1789